

**REMARKS**

Reconsideration and allowance of the present patent application based on the following remarks are respectfully requested. By this amendment, claims 1, 37 and 46 are amended. No claims are added or cancelled. Support for the amendments may be found throughout the original description. No new matter is believed to have been added. Accordingly, after the entry of this response, claims 1-51 are pending in the present application of which claims 24-36 and 47-51 are presently withdrawn from consideration.

In the Office Action, claims 1-5, 7-23 and 37-46 are rejected under 35 U.S.C. §102(b) as being anticipated by Nelson et al. (U.S. Publication No. 2002/0158185) (hereinafter “Nelson”). Applicant respectfully submits that the amendments to claims 1, 37 and 46 obviate the rejection.

The claims have been amended to clarify that the first sensor is a process dependent sensor and the second sensor is a process independent sensor. Support for this feature may be found at least at paragraph [0061] of the present specification. In contrast, as described in Nelson, the primary and secondary control sensors (cited in the office action at page 4) must be substantially the same. See, e.g., paragraph [0054] of Nelson.

The Office Action’s analysis of Nelson with respect to the dependent claims (see, e.g., paragraphs 22-24) appears to improperly group together Nelson’s secondary control sensor and Nelson’s calibration sensor. Nelson describes three sensors, a primary control sensor (i.e., the sensor used for imaging in the lithography system, sensors 104, 106), a secondary control sensor (i.e., a sensor used to produce a height map, sensors 204, 206), and a calibration sensor 208 (used in combination with the secondary control sensor to comprise a calibration system 200). See, e.g., paragraphs [0053-0056]. In the Office Action, the Office’s position is that the secondary control sensor is the recited “first sensor,” but in analyzing the dependent claims the Office Action relies on embodiments of the calibration sensor 208. Nelson does not teach that the secondary control sensor may be a capacitance

gage as asserted in paragraph 22 of the Office Action. To the contrary, Nelson specifically teaches that the primary and secondary control sensors should be as close to identical as possible. See, paragraph [0054].

To the extent that the Office would adopt the position that the calibration sensor corresponds to the recited first sensor and the secondary control sensor corresponds to the recited second sensor, Applicants submit that this would be inconsistent with other recitations in the claims. For example, claim 1 further recites that the second sensor is used to measure a plurality of heights of a second portion of the substrate and to generate a second characterization of the second portion, based on the first characterization and the plurality of heights of the second portion. That is not true of the secondary control sensor of Nelson, which does not make use of any first characterization of an offset error for a first portion of the substrate for correcting height measurements for a second portion of a substrate.

At least because Nelson fails to teach or suggest the recited first and second sensors, Applicants respectfully request the rejection be withdrawn.

In the Office Action, claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nelson in view of Queens et al. (U.S. Publication No. 2003/0218141) (hereinafter “Queens”). Queens fails to overcome the deficiencies of Nelson, above. Applicants therefore respectfully request that the rejection be withdrawn.

**CONCLUSION**

All rejections and objections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited. If any point remains in issue which the Examiner feels may be best resolved through a personal or telephone interview, please contact the undersigned at the telephone number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Date: April 14, 2010 Respectfully submitted,

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